

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1614 OF 1997

1. Zaibunnisa wd/o.)
late Abdul Majid, through her)
Constituted Attorney,)
Shri Munir Abdul Majid,)
2. Mrs.Zahida wd/o.)
Ansar Ahmed Ansari,)
3. Master Kafil Ahmed, a Minor,)
Son of Ansar Ahmed Ansari,)
4. Master Sufyan Ahmed, a Minor,)
S/o.Ansar Ahmed Ansari,)
(all 2 to 6 being heirs of)
late Ansar Ahmed Ansari, the)
deceased son of the said)
Late Abdul Majid))
5. Munir Abdul Majid)
(Married Son))
6. Mrs.Akhtari Johra Mohamed Amin,)
7. Mrs.Hasinabanoo Rehmatulla)
Shaikh,)
8. Anwari Begum Mohd.Yusuf Shaikh,)
9. Mrs.Razia Begum Shahid Ahmed,)
10. Mrs.Nurunnisa Mohd.Safiq,)
11. Mrs.Farida Begum Shabbir Ahmed,))
(all 6 to 11 married daughters))
of late Abdul Majid, through)
their C.A., Munir Abdul Majid,))
the Petitioner No.5.))
All of them ob Bombay,)
Indian Inhabitants,)
C/o.Coronation Bakery,)
Paise Street, Byculla,)
Bombay - 400 011.).. Petitioners

Versus

1. The Municipal Corporation of)
Greater Bombay,)
a Corporation Sole having its)
office at Mahapalika Marg,)
Fort, Mumbai - 400 001.)
2. The Special Land Acquisition)
Officer, B.M.C. Bombay and)
B.S.D., Shri Chhatrapati)
Shivraj Maharaj Market Bldg.,)
2nd Floor, Palton Road,)
Mumbai - 400 001.)
3. State of Maharashtra,)
having its office of Mantralaya)
Mumbai - 400 032.)
- 4(a).Noshir Framroze Dubash,)
- 4(B).Sumant Moreshwar Patil,)
both of Bombay, Indian)
Inhabitants, the Executors of)
Jamshedji Savakashav Dubash,)
having office at M/s.Dubash &)
Patil, "Unique House",)
2nd Floor, 26, Parsi Bazar)
Street (now known as Sayed)
Brelvi Road, Mumbai - 400 001.)
5. Framrose Savaksha Dubash,)
6. Smt.Aloo Noshir Dubash,)
all of 4 to 6 of Mumbai,)
Indian Inhabitants, residing)
at Mahrukh Mansion, 1st Floor,)
Alibhai Premji Marg,)
Grant Road, Mumbai - 400 007.)
7. Ms. Faizi D/o.)
Ansar Ahmed Ansari,)
8. Master Hafeez Ahmed, a Minor,)
S/o.Ansar Ahmed Ansari,)
9. Mr.Altaf Ahmed S/o.Niaz Ahmed)
Abdul Ansari.)
10. Mr.Laik Ahmed S/o.Niaz Ahmed)

- Abdul Ansari,)
11. Miss Nilofar D/o.Niaz Ahmed)
Abdul Ansari,)
12. Master Pervez Ahmed, a Minor,)
S/o.Niaz Ahmed Ansari,)
(all 7 to 12 being heirs of)
late Niaz Ahmed Abdul, the)
deceased son of the said)
Late Abdul Majid.))
13. Mrs.Aishabi Wd/o.Nisar Ahmed,)
(the widow of Nisar Ahmed,)
Son of said Late Abdul Majid),)
all 7 to 13 of Mumbai,)
Indian Inhabitants,)
C/o.Coronation Bakery,)
Paise Street, Byculla,)
Mumbai - 400 011.).. Respondents
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S/Shri Sanjay Jain with Ashok V.Jain for the petitioners.

Ms Shobha Ajitkumar for the respondent-BMC.

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CORAM : R.M.S.KHANDEPARKAR &
V.M.KANADE, JJ.

DATED : 13th SEPTEMBER, 2005.

ORAL JUDGMENT : (Per R.M.S.Khandeparkar, J)

1. Heard. The petitioners by the present petition seek either to quash the acquisition proceedings in LAQ No.68 of 1981 wherein the award was passed on 20th May, 1986 on the ground of failure on the part of the authorities to serve notice under Section 9(3) of the Land Acquisition Act, 1894,

hereinafter called as "the said Act", or in the alternative for a direction to provide alternate accommodation of the premises in the vicinity of the area acquired.

2. Few facts relevant for the decision in this matter are that the area of land bearing Survey No.1/1928 of Byculla Division was sought to be acquired under the land acquisition proceedings No.68 of 1981 admeasuring an area of 567.73 sq.meters and after issuing the notification, declaration and hearing of the parties, the award came to be passed in that regard on 20th May, 1986.

3. It is the case of the petitioners that there are legal heirs of one Abdul Majid, who was the tenant in respect of a piece of land which has been acquired under the land acquisition proceeding No.68 of 1981 having therein a commercial establishment in the name and style "M/s.Coronation Bakery". It is their case that none of the petitioners were issued with the notice under Section 9(3) of the said Act though they were the occupants within the meaning of the said expression under the said provisions of law, and therefore, the acquisition proceedings are bad in law. In the alternative, it is the contention of the

petitioners that it was the policy of the Corporation to allot alternate premises who are affected on account of such acquisition of the land and in that regard, even the acquiring authority had made observations in the award itself and no such alternate accommodation had been allotted to the petitioners. It is their further case that they had sought to challenge the acquisition proceedings on failure on the part of the authorities to allot alternate accommodation by filing the suit. However, having realised that no suit was maintainable, the petitioners have preferred the present petition.

4. It is an undisputed fact that pursuant to the filing of the petition, the possession of the premises in question was continued to be with the petitioners, consequent to the interim relief granted in this petition.

5. As regards the challenge to the acquisition proceedings on the ground of failure on the part of the authorities to serve notice under Section 9(3) of the said Act, the same does not appeal to our mind as the failure, in that regard, by itself cannot render the acquisition proceedings to be vitiated or bad in law. At the most, the aggrieved party can claim

compensation in relation to the premises which were occupied by such person, and having suffered loss on account of divesting him of such premises as a result of acquisition proceedings. Mere right to claim the compensation in that regard would not render the entire acquisition proceedings to be bad in law. Certainly, such a claim can be adjudicated upon by the competent authorities or even independently by way of civil remedy.

6. As regards the contention for alternate accommodation, apart from mere claim in that regard, the petitioners have not been able to justify such claim, based on any provision of law as such. The petitioners in the petition nowhere disclose any statutory provision nor the learned Advocate for the petitioners has been able to point out any such provision of law which would compel the Corporation to allot any such alternative accommodation. However, as rightly submitted by the learned Advocate for the petitioners, the observations in the award passed by the competent authority disclose as under:-

"In fact the only principal commercial tenant M/s. Coronation Bakery is entitled for alternate accommodation. The question of

giving alternate accommodation is left at the discretion of the A.B.viz., B.M.C. who may decide this issue according to their policy."

7. At the same time, the award also discloses that the landlord of the property had informed the acquiring authority that there is only one commercial tenant in the land namely M/s. Coronation Bakery. The award also discloses that the inventory disclosed the names of some of the petitioners as the principal tenants. In these circumstances, certainly, the petitioners would be entitled to approach the Corporation with necessary representation for alternate accommodation in case the policy of the Corporation at the relevant time provided for allotment of such alternate accommodation. Undoubtedly, the petitioners have not so far approached with the necessary representation to the Corporation. Since the writ petition was pending all throughout in this Court with the interim relief in favour of the petitioners in relation to the suit premises, it would be in the fitness of justice to allow the petitioners to approach the Corporation with necessary representation in that regard with further direction to the Corporation to decide such representation in accordance with the provisions of

law and its policy within the specified period.

8. The question of this Court itself directing the Corporation to allot alternate accommodation does not arise in the absence of specific provision in that regard having been disclosed. However, as already stated above, direction can be issued to the extent to entertain the representation in that regard by the Corporation to be decided in accordance with the provisions of law.

9. Hence, the petition partly succeeds. The petitioners are hereby permitted to make necessary representation to the Corporation within a period of four weeks from today and in case such representation is made, the same shall be decided by the Corporation within a period of six weeks thereafter, after hearing the petitioners. The Corporation shall take decision on such representation in accordance with the provisions of law and bearing in mind its policy. The decision taken shall be communicated to the petitioners, and in case the decision happens to be adverse to the petitioners, the same shall not be given effect to for a period of four weeks from the date of communication of such decision to the petitioners. Till such period expires, the

Corporation shall not take any coercive measure against the petitioners for dispossessing them from the suit premises, subject to that the petitioners shall not induct any third party in the suit premises nor shall create any third party interest therein and accordingly shall file undertaking in the office of the Corporation to that effect within a period of four weeks along with their representation.

10. The rule is made absolute in above terms, with no order as to costs.

(R.M.S.KHANDEPARKAR, J)

(V.M.KANADE, J)